

EUGENE KENNETH JONES,)
)
Plaintiff,)
)
v.) No. 4:10CV629 TIA
)
STEVE LARKINS, et al.,)
)
Defendants.)

This matter is before the Court on plaintiff's motion to proceed in forma pauperis. Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. *Id.*

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$7.50, and an average monthly balance of \$0.02. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$1.50, which is 20 percent of plaintiff's average monthly deposit.

Additionally, plaintiff originally filed his complaint with another prisoner-plaintiff. McCranie v. Larkins, 4:10CV312 CAS. The Court struck plaintiff from that action because prisoners proceeding in forma pauperis may not proceed jointly under Rule 20. Almost all of the allegations in the complaint refer to Willie McCranie, not plaintiff Eugene Jones. As a result, the manner in which the complaint is drafted makes it difficult to review, and the Court will order plaintiff to file an amended complaint. Plaintiff is warned that the filing of an amended complaint replaces the original complaint, and claims that are not realleged are deemed abandoned. E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation, 396 F.3d 922, 928 (8th Cir. 2005). Plaintiff's amended complaint must be filed no later than thirty days from the date of this Order.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$1.50 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that if plaintiff fails to pay the initial partial filing fee within thirty (30) days of the date of this Order, then this case will be dismissed without prejudice.

IT IS FURTHER ORDERED that plaintiff must submit an amended complaint within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that if plaintiff fails to file an amended complaint within thirty (30) days of the date of this Order, then this case will be dismissed without prejudice.

Dated this 16th day of April, 2010.

/s/ Terry I. Adelman
UNITED STATES MAGISTRATE JUDGE